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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,868	11/28/2000	Daniel Faneuf	FANEUF 00.02	6422

7590

05/06/2002

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EXAMINER

SMITH, KIMBERLY S

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 05/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/723,868

Applicant(s)

FANEUF, DANIEL

Examiner

Kimberly S. Smith

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 16 April 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 04/16/02 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding the applicant's argument that there is nothing in the Applicant's admission that would suggest a molded clip would be useful for holding fish or to add a rope to the clip, it is well known that a clip is any of various devices that grip, clasp or hook (*Merriam-Webster's Tenth Edition Dictionary*) and that a clip of any design, by its nature, would be known to one having ordinary knowledge in the art to function for holding any material or item, inclusive of a fish. The Johnson (US 6,044,582) reference provides motivation to attach a clip to a rope for the purpose of culling fish. It is therefore considered that the rejections are based upon proper hindsight given the general knowledge and skill of an artisan in the art at the time the invention was made.

***Drawings***

2. The corrected or substitute drawings were received on 04/16/02. These drawings are accepted.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action

4. **Claims 1-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, US Patent 6,044,582 in view of Applicant's Admission, pages 3-4 and Figure 1 of current application (Admission).

Johnson discloses an apparatus for holding fish comprising a length of rope (12) having a loop formed at a first end (seen in figure 3), the loop securing the rope to a clip (32) wherein the clip is adapted for releasably holding a fish. However, Johnson does not positively disclose the clip design with the exception that the clip is held by the lower end portion loop of the rope and that it be adapted for releasably holding a fish. Admission discloses a clip having two or more opposing protrusions (136 and 138) moveable between a first position and a second position, the protrusions urged towards one another by a biasing member (116) to create a gripping force. While, it is not positively stated that the gripping force is capable of holding a fish, it is obvious that the gripping force would be sufficient to hold a fish as the weight of fish vary from several hundred pounds to a few ounces (to which the lightest force would be capable of holding).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the clipping device as taught by Admission as the clip device

disclosed by Johnson as a matter of design choice since the clipping device as taught by Admission includes a base part capable of being held within the lower end portion of the rope (area located beneath Biasing Member 116) and having a hook part adapted for releasably holding an item (i.e. a fish) as required by Johnson. As any clip is designed for the purpose of holding an item, a clip of any particular design has the same functional equivalency and it is therefore within the skill of an artisan to determine the most appropriate clip capable for use in any given situation.

Regarding claim 12, Johnson as modified discloses the rigid members being rotatable about a spacer (114 of admission).

Regarding claim 10, Johnson as modified discloses the protrusions being angled towards the biasing member (as seen in figure 1 of admission).

Regarding claim 11, Johnson as modified discloses the protrusion comprising a plurality of grooves (126 and 128 of admission).

Regarding claims 2 and 13, Johnson as modified discloses the clip being molded as one piece (page 3, line 3 of Admission).

Regarding claims 3 and 14, Johnson as modified discloses the clip as being molded of acetal resin (page 3, line 4 of Admission).

Regarding claims 4 and 15, Johnson as modified discloses the rope being a braided hollow polypropylene (column 1, line 45 of Johnson).

Regarding claims 5, 16 and 17, Johnson as modified discloses the loop being formed by inserting the first end of the rope inside the hollow rope a spaced distance from the first end wherein the loop couples the rope to the clip (see figure 3 of Johnson).

Regarding claims 6 and 18, Johnson as modified discloses the rope having a positive buoyancy in that braided hollow polypropylene is capable of being buoyant on water (see also column 2, lines 43-45 of Johnson).

Regarding claims 7 and 19, while Johnson as modified does not disclose the rope comprising a second end which is formed into a loop, it is well known that the addition of a loop in a length of rope assists in the holding of the rope (e.g., an animal leash) and is therefore considered to be within the ordinary skill of an artisan in the art to loop the second end of the rope to aid in the grasping of the rope.

Regarding claim 8, Johnson as modified discloses a marker for indicating the weight of an attached fish (column 1, lines 37-39 of Johnson).

Regarding claims 9 and 20, Johnson as modified discloses the rope being adapted to float on the surface of water.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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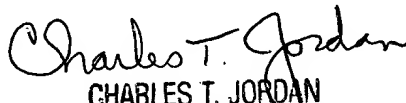
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 703-308-8515.

The examiner can normally be reached on Monday thru Friday (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4196 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

  
CHARLES T. JORDAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

Kimberly S. Smith  
Examiner  
Art Unit 3644

kss  
May 1, 2002